

The below described is **SIGNED**.

Dated: March 28, 2014



R. KIMBALL MOSIER
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number: 10-32745
Fasi M. Filiaga, Jr.,	Chapter 7
Debtor,	Judge R. Kimball Mosier
United States Trustee	Adversary Proceeding No. 11-2432
Plaintiff,	
v.	
Fasi M. Filiaga, Jr.,	
Defendant.	

**FINDINGS AND CONCLUSIONS IN SUPPORT OF
ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT**

The hearing on the motion of the United States Trustee (UST) for partial summary judgment came before the Court on March 25, 2014. John T. Morgan appeared on behalf of the UST. The Debtor/Defendant, Fasi M. Filiaga, Jr., (Debtor), appeared *pro se* telephonically.

The Court has reviewed the UST's complaint, the answer filed by the Debtor, the UST's motion for partial summary judgment and supporting memorandum, and the Debtor's response to

the UST's motion for partial summary judgment. In doing so, the Court draws all reasonable inferences in a light most favorable to the Debtor.

FACTS

1. The UST seeks partial summary judgment under 11 U.S.C. § 727(a)(3) based upon allegations that Debtor failed to preserve and keep the requisite recorded information in this case.

2. The Debtor asserts in his answer that he has been incarcerated since December 29, 2010.

3. In paragraph #5 of the Debtor's response to admissions, Debtor asserts that he has not seen or had access to any of his records since August 2009 when the house located at 1330 South 1300 East, Salt Lake City, Utah 84105, where the records were stored, was lost to foreclosure.

ANALYSIS

Summary judgment is appropriate if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. In making this determination, a court must examine the record and all reasonable inferences that might be drawn from it in the light most favorable to the non-moving party. *Barber ex rel. Barber v. State of Colorado Dept. Of Revenue*, 562 F.3d 1222, 1229 (10th Cir. 2009). When the evidence could lead a rational fact-finder to resolve the dispute in favor of either party, summary judgment is improper. *SCO Grp., Inc. v. Novell, Inc.*, 578 F.3d 1201, 1215 (10th Cir. 2009).

Although a debtor's *pro se* status does not excuse their obligation to comply with fundamental procedural requirements, *In re Taylor*, 495 B.R. 28, 33 (10th BAP 2013), *pro se*

pleadings are held to less stringent standards and should be reviewed liberally. *Beedle v. Wilson*, 422 F.3d 1059 (10th Cir. 2005). Grounds for denying a discharge are to be narrowly construed. *In re Kallstrom*, 298 B.R. 753 (10th Cir. BAP 2003).

The Debtor alleges that the required documents were lost because the documents were stored in his home and that his home and the documents stored in the home were both lost during the foreclosure process. The Debtor's assertion, when viewed in the light most favorable to Debtor, is sufficient to raise a material disputed fact of whether Debtor's failure to keep or preserve recorded information and documents was justified under all of the circumstances of the case. Accordingly, the Court is unable to find that the UST is entitled to partial summary judgment under 11 U.S.C. § 727(a)(3).

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DESIGNATION OF PARTIES TO BE SERVED

Service of the forgoing **FINDINGS AND CONCLUSIONS IN SUPPORT OF ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT** shall be served to the parties in the manner designated below:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users and will be serviced notice of entry of the foregoing **FINDINGS AND CONCLUSIONS IN SUPPORT OF ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT** through the CM/ECF system:

- John T. Morgan tr john.t.morgan@usdoj.gov
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

By U.S. Mail: In addition to the parties of recorded receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P.5(b).

- Fasi M. Filiaga, Jr.
Central Utah Correctional Facility
Inmate #199459
P.O. Box 550
Gunnison, UT 84634-0550

Clerk of the U.S. Bankruptcy Court